

## REMARKS

Claims 2 - 34 are pending in the Application. The Application was filed without a numbered claim 1. Applicant has amended dependant claims 3-7, 20 and 22-26 to properly depend from independent claim 2.

Claims 2 - 34 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Chinery (U.S. Patent Application Publication 2004/0077556) in view of Lawn et al. (U.S. Patent 6,821,774), Brink (US Patent 6,113,949) and Allen (US Patent 5,480,657). Applicant respectfully traverses the rejection.

The Examiner notes in his rejection that none of the cited prior art expressly discloses the combination of the claims. Rather, the Examiner states that the prior art "suggests" the combination because the art discloses that:

- caffeine, adrenergic amines, forskolin, guggulsterone, and alpha-2-receptor antagonists are used to control weight;
- caffeine, adrenergic amines and alpha-2-receptor antagonists increase cAMP; and,
- vincocetine inhibits cAMP degradation.

The Examiner then states that it would be well within the skill of one in the art to combine all these compounds, with the "expectation that the addition of vincocetine would potentiate the effects of caffeine, adrenergic amines and alpha-2-receptor antagonists by inhibiting the degradation of cAMP and the combination of the six components would be effective in controlling weight. The Examiner also states that it is obvious to add Black Pepper because the chromium contained therein would be effective.

With all due respect, this rejection is a classic example of hindsight

reconstruction. The Examiner has pointed to no citation in any of the four references that teach, suggest or disclose *the combination*.

The Examiner does state that the prior art teaches that the specific ingredients have various effects, and so the prior art suggests that someone would combine the ingredients in order to obtain those effects. But that conclusion is erroneous for two reasons:

- First, there is no specific discussion, teaching or disclosure that the ingredients of the claims *are to be combined* and the Examiner's proposed scenario is not based on any such specific suggestion in the art that these specific ingredients are to be combined.
- Second, the Examiner's reasoning would lead to the invalidation of most currently existing patents. That is, most currently existing patents are combinations of various ingredients. According to the Examiner's reasoning, if those ingredients are known, then a combination of any of those ingredients is known. That, with all due respect, is not the law.

Accordingly, Applicant respectfully requests the withdrawal of the rejection and allowance of claims 2-34.

## CONCLUSION

Therefore, for the reasons given above, Applicant submits the application is now in condition for allowance and Applicant respectfully requests early issuance of the Notice of Allowance.

Respectfully submitted,



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